



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

MAY 12 1999

Nikole Whitehead
Vice President
Statewide Advocacy Network on Disabilities, Inc.
P.O. Box 1836
Tampa, Florida 33601-1836

Dear Ms. Whitehead:

This is in response to your letters to the Office of Special Education Programs (OSEP) dated February 3, 1999 and September 3, 1998, written on behalf of the Statewide Advocacy Network for Disabilities, Inc. (STAND). Please excuse the delay in issuing this response.

In your letters, you ask the following:

Does a request for mediation prior to a parent request for due process give rise to the stay put provisions?

The right of a child involved in a complaint to be maintained in his or her current educational placement pending the completion of review proceedings, also known as the "pendency" or "stayput" provision, is found at §615 (j) of the Individuals with Disabilities Education Act (IDEA).

The implementing regulation at 34 CFR §300.514 provides in pertinent part:

Child's status during proceedings.

(a) Except as provided in §300.526 [regarding appeals of interim alternative educational settings], during the pendency of any administrative or judicial proceeding regarding a complaint under §300.507, unless the State or local agency and the parents of a child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.

The statute at 20 U.S.C. §1415(e) and the implementing regulation at 34 CFR §300.506 set out requirements for mediation.

IDEA only mandates that the option of mediation be available when a due process hearing has been requested, therefore, IDEA "pendency" or "stay-put" provision applies only when a due process hearing is requested under IDEA. Thus, "stay-put" would not attach to the child's current educational placement based solely on a request for mediation. However, it would not be inconsistent with Part B for the parents and the public agency to agree that pending the outcome of the mediation, the child should remain in his or her current educational placement.

We hope that you find this explanation helpful. If we can be of further assistance, please contact Ms. Rhonda Weiss or Dr. JoLeta Reynolds of OSEP at (202) 205-5507, or (202) 205-9053, respectively.

Sincerely,

Thomas Hehir
Director

Office of Special Education
Programs

cc: Ms. Shann Goff
Florida Department
of Education